

# EXHIBIT 4

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3 IN RE: : MDL NO.:

JOHNSON & JOHNSON TALCUM : 16-2738 (MAS)(RLS)

4 POWDER PRODUCTS :

MARKETING, SALES :

5 PRACTICES, AND PRODUCTS :

LIABILITY LITIGATION :

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7 - - -

8 Wednesday, July 10, 2024

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10 Remote videotaped deposition of PAUL  
11 HESS, via Zoom video conference, conducted at  
12 the location of the witness in Atlanta,  
13 Georgia, taken on the above date, beginning at  
14 approximately 9:06 a.m., before Jessica M.  
15 Gericke, RPR, CCR-NJ, and Notary Public in and  
16 for Delaware, New Jersey, and Pennsylvania.

<p>Page 2</p> <p>1 APPEARANCES VIA ZOOM VIDEO CONFERENCE:  2 BOVIS, KYLE, BURCH &amp; MEDLIN, LLC  BY: ERIC LUDWIG, ESQUIRE  3 200 Ashford Center North  Suite 500  4 Atlanta, GA 30338-2668  678-338-3925  5 eludwig@boviskyle.com  (Present with Witness)  6  Counsel for Deponent and Materials  7 Analytical Services  8  BEASLEY, ALLEN, CROW, METHVIN,  9 PORTIS &amp; MILES, P.C.  BY: P. LEIGH O'DELL, ESQUIRE  10 218 Commerce Street  Montgomery, AL 36104  11 334-269-2343  leigh.odell@beasleyallen.com  12 (Present with Witness)  13 Counsel for Plaintiff Steering Committee  14  COHEN, PLACITELLA &amp; ROTH  15 BY: CHRISTOPHER M. PLACITELLA, ESQUIRE  DREW M. RENZI, ESQUIRE  16 127 Maple Avenue  Red Bank, NJ 07701  17 732-747-9003  cplacitella@cpirlaw.com  18  Counsel for Plaintiff Steering Committee  19  20  21  22  23  24  25</p>	<p>Page 4</p> <p>1 APPEARANCES (continued):  2 ALSO PRESENT:  3 SPECIAL MASTER JOEL SCHNEIDER  4 CAROLIN De La ROSA, VIDEOGRAPHER  5 SHU-CHUN SU, PH.D.  6 - - -  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p>Page 3</p> <p>1 APPEARANCES (continued):  2 ASHCRAFT &amp; GEREL, LLP  BY: MICHELLE A. PARFITT, ESQUIRE  3 1824 K Street NW  Washington, DC 20006  4 202-669-0032  mparfitt@ashercraftlaw.com  5  Counsel for Plaintiff Steering Committee  6  REILLY, McDEVITT &amp; HENRICH, P.C.  7 BY: BRANDY L. HARRIS, ESQUIRE  8 3 Executive Campus  Suite 310  9 Cherry Hill, NJ 08002  856-317-7180  10 bharris@rmh-law.com  11 Counsel for Personal Care Products Council  12  KING SPALDING, LLP  13 BY: MORTON D. DUBIN, II, ESQUIRE  KEVIN HYNES, ESQUIRE  14 JAKE KEESTER, ESQUIRE  1185 Avenue of the Americas  15 34th Floor  New York, NY 10036  16 212-790-5343  mdubin@kslaw.com  17  Counsel for Defendant Johnson &amp; Johnson  18  FAEGRE DRINKER BIDDLE &amp; REATH LLP  19 BY: SUSAN M. SHARKO, ESQUIRE  20 600 Campus Drive  Florham Park, NJ 07932  21 973-549-7000  susan.sharko@faegredrinker.com  22  Counsel for Defendant Johnson &amp; Johnson  23  24 - - -  25</p>	<p>Page 5</p> <p>1 INDEX  2 WITNESS NAME PAGE  3 Paul Hess  4 By Mr. Dubin 6  5  6 - - -  7  8 EXHIBITS  9 NO. DESCRIPTION PAGE  10 1 Resume of Paul M. Hess 8  11 2 MAS Report, dated 20  February 24, 2020  12  3 MAS Report, dated February 22  13 1, 2019  14 4 Hess Slide 2 46  15 5 MAS Report, dated September 58  16 16, 2020  17  6 MAS report, dated February 64  17 24, 2020  18 7 Declaration of William 69  Longo, Ph.D.  19  8 Hess Slide 20 70  20  9 Hess Slide 22 74  21  10 Hess Slide 24 76  22  11 Hess Slide 25 81  23  12 J3 Resources Inc. Report, 83  24 dated July 13, 2018  25</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. LUDWIG: Same objection.  2 That is exactly what the Court  3 ruled upon. So objection.  4 MR. DUBIN: No. Those are the  5 reports at issue, which the Court said we  6 could ask about.  7 MS. O'DELL: And if you would  8 like to ask Mr. Hess about specific reports,  9 he is here and prepared to respond to your  10 questions, but asking for expert opinion is  11 beyond the scope of what Judge Schneider  12 established for this deposition and we'll  13 instruct the witness not to answer.  14 MR. LUDWIG: I instruct the  15 witness not to answer that question.  16 BY MR. DUBIN:  17 Q. In your reports identifying  18 chrysotile in Johnson &amp; Johnson, what color  19 are the particles that you're calling  20 chrysotile typically in parallel?  21 MR. LUDWIG: Objection to form.  22 THE WITNESS: The colors that I  23 utilize to determine the wavelength are at the  24 edge of the particle and not in the center.  25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. DUBIN: All right. Let's  2 take this down. We'll come back to it when we  3 show your reports.  4 BY MR. DUBIN:  5 Q. What color -- what is the refractive  6 index of talc?  7 A. It has wide -- a large  8 birefringence, but normally it will be  9 somewhere in the range of around 1.540 to  10 1.605, based on the experience of what I have  11 seen.  12 Q. How about a talc plate, a flat talc  13 plate? What is -- what is the refractive  14 index of a talc plate?  15 MS. O'DELL: Object to the  16 form.  17 THE WITNESS: I don't believe  18 the talc plate has any birefringence, but the  19 edges that I have seen have been blue in 1.55,  20 and have been yellowish in 1.605.  21 BY MR. DUBIN:  22 Q. Did the CSDS colors associated with  23 talc itself in 1.550 oil include the color  24 red?  25 MS. O'DELL: Would you repeat</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. What color are the particles?  2 MS. O'DELL: Objection to the  3 form.  4 What particle? What --  5 BY MR. DUBIN:  6 Q. The particle that you're calling  7 chrysotile in the reports that you're talking  8 about today?  9 MR. LUDWIG: Is there a  10 specific report you want to show him? This  11 right here, it looks like an exhibit created  12 by defense counsel. So that's not -- he is  13 not here to opine about this exhibit that  14 looks like a PowerPoint by someone else.  15 This is not a --  16 MR. DUBIN: This is enough  17 speaking objections. You can make your  18 objections if you want to make your  19 objections. If you want to instruct your  20 witness not to answer the question, then you  21 can do that, but no more speaking objections.  22 It's gone way too far.  23 MR. LUDWIG: Based on the scope  24 that the Judge had lined out, I am instructing  25 him not to answer that question.</p>	<p style="text-align: right;">Page 57</p> <p>1 the question? I missed the first part.  2 BY MR. DUBIN:  3 Q. Do the central stop dispersion  4 staining colors of talc plates themselves in  5 1.550 oil include the color red?  6 MS. O'DELL: Object to the  7 form.  8 MR. LUDWIG: Same objection as  9 before.  10 I instruct you not to answer.  11 That's -- that calls for an  12 expert opinion.  13 MR. DUBIN: I am asking his  14 understanding and it relates to this work that  15 he is doing.  16 BY MR. DUBIN:  17 Q. Did it -- does it include red?  18 MS. O'DELL: If you have a  19 specific particle you would like to ask him  20 about, that's within the scope of the order,  21 but to ask it in isolation is beyond the scope  22 and seeks an expert opinion.  23 MR. DUBIN: Fine --  24 MR. LUDWIG: Join.  25 MR. DUBIN: -- when you get to</p>

<p style="text-align: right;">Page 66</p> <p>1 that question.</p> <p>2 MR. DUBIN: You're instructing</p> <p>3 him not to answer? I am asking him about the</p> <p>4 work he did, how he set up his microscope, and</p> <p>5 what filters he was using and you're</p> <p>6 instructing him not to answer that?</p> <p>7 MS. O'DELL: That was not your</p> <p>8 question.</p> <p>9 MR. DUBIN: Well, I just asked</p> <p>10 him about whether it had a blue light filter</p> <p>11 and whether he was using it and I am asking</p> <p>12 him now what his understanding of the purpose</p> <p>13 of that type of filter is. Are you</p> <p>14 instructing him not to answer that question?</p> <p>15 MS. O'DELL: He is here to --</p> <p>16 he is here to testify to what he did, which</p> <p>17 he -- the equipment he used, which he has been</p> <p>18 responding to those questions.</p> <p>19 Understanding about certain</p> <p>20 methodologies, giving his opinion about</p> <p>21 certain methodologies is beyond the scope of</p> <p>22 what Judge Schneider has ordered.</p> <p>23 MR. DUBIN: Are you instructing</p> <p>24 him not to answer --</p> <p>25 MR. LUDWIG: The objection --</p>	<p style="text-align: right;">Page 68</p> <p>1 get there. Okay. Thank you.</p> <p>2 BY MR. DUBIN:</p> <p>3 Q. Do you know how looking at an image</p> <p>4 to tell whether a blue light filter or</p> <p>5 daylight filter is being used?</p> <p>6 A. I don't recall ever dealing with</p> <p>7 them.</p> <p>8 Q. Okay. How was focus adjusted on the</p> <p>9 Olympus microscope?</p> <p>10 A. Focus would be adjusted using the</p> <p>11 fine focus knob.</p> <p>12 Q. Okay. I want to show you another</p> <p>13 image and ask you if you can tell me whether a</p> <p>14 blue light filter is being used or not.</p> <p>15 MR. DUBIN: It will be</p> <p>16 exhibit -- what number are we on? We are now</p> <p>17 on six?</p> <p>18 THE COURT REPORTER: Seven.</p> <p>19 MR. DUBIN: And that is --</p> <p>20 THE COURT REPORTER: You're on</p> <p>21 exhibit 7, I believe.</p> <p>22 MR. DUBIN: Exhibit 7. Okay.</p> <p>23 That is CX-11A to call it up and if you could</p> <p>24 just go to page 22 of it and put it in chat.</p> <p>25 MS. O'DELL: Mr. Hess, just</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. DUBIN: -- a simple</p> <p>2 question about the purpose of a blue light</p> <p>3 filter? Are you instructing him not to</p> <p>4 answer?</p> <p>5 MR. LUDWIG: Yes.</p> <p>6 MR. DUBIN: Okay.</p> <p>7 MR. LUDWIG: I believe that is</p> <p>8 outside the scope of what the Judge just</p> <p>9 said --</p> <p>10 MR. DUBIN: I really don't --</p> <p>11 if you instruct him not to answer, I don't</p> <p>12 need to hear a long speaking objection in</p> <p>13 addition.</p> <p>14 MR. LUDWIG: Sure. Fair</p> <p>15 enough.</p> <p>16 MS. O'DELL: And just for the</p> <p>17 record, Morty -- and I think it's just a page</p> <p>18 number issue -- you identified what's on the</p> <p>19 screen as page 36 of the report. I am</p> <p>20 assuming you mean 36 -- page 36 in the PDF?</p> <p>21 MR. KEESTER: It's 39 in the</p> <p>22 PDF.</p> <p>23 MR. DUBIN: Thirty-nine.</p> <p>24 Sorry.</p> <p>25 MS. O'DELL: Okay. Let me just</p>	<p style="text-align: right;">Page 69</p> <p>1 give us a moment to see what's going to be put</p> <p>2 on the screen and what the report is.</p> <p>3 (Exhibit 7 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Page 22, can you tell me if a blue</p> <p>7 light or daylight filter is being used on this</p> <p>8 image?</p> <p>9 MR. LUDWIG: Objection --</p> <p>10 objection. This, once again, calls for expert</p> <p>11 opinion, which is outside the scope of the</p> <p>12 purpose of this deposition as instructed by</p> <p>13 the Judge.</p> <p>14 MR. DUBIN: Are you instructing</p> <p>15 him not to answer the question?</p> <p>16 MR. LUDWIG: I am instructing</p> <p>17 him not to answer the question.</p> <p>18 MS. O'DELL: Yes. This is not</p> <p>19 a document that's been disclosed in the MDL.</p> <p>20 It's a report for Dr. Longo. It's analysis of</p> <p>21 ceramic slip clay for something else that's</p> <p>22 not related and we object to the use of this</p> <p>23 exhibit.</p> <p>24 MR. DUBIN: Okay. Can we call</p> <p>25 up -- we'll make the next exhibit in order</p>

<p style="text-align: right;">Page 78</p> <p>1 asking him about his reports that are at issue  2 in this case and asking him what color that he  3 is calling particles and that is exactly in  4 the scope of the deposition.  5 So unless you're instructing  6 him not to answer that as well, my question  7 stands.  8 MR. LUDWIG: I instruct him not  9 to answer that question.  10 MR. DUBIN: Okay. So now  11 you're instructing the witness not to answer  12 questions even about the specific reports that  13 he was -- that we were permitted to depose him  14 on.  15 Is that my understanding?  16 MS. O'DELL: So would you  17 repeat your question, please?  18 MR. DUBIN: Oh, my goodness.  19 What color is the particle that you're calling  20 chrysotile here?  21 MR. LUDWIG: I am standing by  22 my objection. I am instructing him not to  23 answer.  24 It goes to -- you're asking him  25 to opine as to the color. The color is on the</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. We can zoom more in.  2 A. The center part of it is a golden  3 yellow, but I cannot determine the edges,  4 which is where I need to look.  5 Q. Okay. Well, we'll go over this edge  6 effect, but you can agree that this is not --  7 this does not look like reference chrysotile,  8 correct?  9 MS. O'DELL: Object to the  10 form.  11 MR. LUDWIG: Same objection.  12 THE WITNESS: The center of the  13 particle is not what you would usually call.  14 BY MR. DUBIN:  15 Q. And -- sorry. And you see that  16 there are rounded structures in this image,  17 right?  18 A. There are.  19 Q. Those are talc?  20 A. Some may be.  21 Q. Are they the same color as the  22 particle that you're calling chrysotile?  23 MS. O'DELL: Object to the  24 form.  25 THE WITNESS: It is, but I --</p>
<p style="text-align: right;">Page 79</p> <p>1 screen and it is part of an expert report  2 prepared by MAS and you're taking it out of  3 context.  4 So I am going to instruct you  5 not to answer.  6 If you want to ask him how he  7 developed the color, that's what the Judge  8 said, but --  9 MR. DUBIN: (Inaudible.)  10 MR. LUDWIG: -- his personal  11 involvement.  12 BY MR. DUBIN:  13 Q. You are the analyst who did this  14 work for the Zimmerman report and we can go  15 through your PLM -- the PLM sheets.  16 You did this analysis, right?  17 MR. LUDWIG: Okay. That's  18 fine. Let's do that.  19 BY MR. DUBIN:  20 Q. You did this analysis? These are  21 your PLM images, correct, Mr. Hess?  22 A. It is.  23 Q. So I'm asking you what color did you  24 assess this particle as?  25 A. Could you zoom in on the particle?</p>	<p style="text-align: right;">Page 81</p> <p>1 the other particle colors, without being able  2 to see the true edges of the particle in  3 question --  4 BY MR. DUBIN:  5 Q. Okay. We'll talk about edges --  6 MS. O'DELL: Excuse me, Morty.  7 I don't believe you could hear. He is not  8 finished with his answer.  9 BY MR. DUBIN:  10 Q. Go ahead.  11 A. -- I cannot comment.  12 Q. We'll talk about edges later.  13 Have you seen any PLM work of  14 Johnson &amp; Johnson done by any other experts?  15 A. I don't recall.  16 MR. DUBIN: Okay. Let's put up  17 Hess slide 25 as exhibit 11.  18 (Exhibit 11 marked for  19 identification.)  20 BY MR. DUBIN:  21 Q. We're looking at images of PLM --  22 and I will mark the entire report also from  23 Mr. Poye and from you -- both from on talcs.  24 Do you have any understanding  25 why the images look so different?</p>

<p style="text-align: right;">Page 94</p> <p>1 go back and forth between them if you need to.  2 MR. DUBIN: Can we flip back to  3 Valadez?  4 BY MR. DUBIN:  5 Q. Do you see that the Zimmerman report  6 image is more golden or orange?  7 A. I do.  8 Q. Do you know why that is?  9 A. From the BH2, which is the Zimmerman  10 report, we were on a tungsten lamp, and it was  11 to the respect that we were dealing with extra  12 yellows from the tungsten lamp.  13 Q. So the tungsten lamp was changing  14 the color of the particle then?  15 MS. O'DELL: Object to the  16 form.  17 MR. LUDWIG: Object to form.  18 BY MR. DUBIN:  19 Q. Is that correct?  20 MS. O'DELL: Object to the  21 form.  22 THE WITNESS: We felt it was  23 adding more yellow to the image of what we  24 were seeing and what we were documenting.  25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 96</p> <p>1 your question was.  2 MR. DUBIN: We can read the  3 question back.  4 THE COURT REPORTER: One  5 moment.  6 "QUESTION: And it wasn't just  7 adding yellow. If we go back to the  8 Zimmerman image, it was adding sort of  9 darker golden colors or orange colors to  10 the image, right?"  11 MS. O'DELL: Object to the  12 form.  13 MR. LUDWIG: I am going to  14 stand by my objection.  15 MR. DUBIN: So you're not just  16 objecting. You're instructing him not to  17 answer that question. I need to understand  18 that.  19 MR. LUDWIG: Correct.  20 MR. DUBIN: So if I ask him any  21 questions trying to compare various images in  22 his reports, are you going to instruct him not  23 to answer that?  24 MS. O'DELL: You can proceed  25 with your deposition, Morty. It's no way</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. And it wasn't just adding  2 yellow. If we go back to the Zimmerman report  3 image, it was adding sort of darker golden  4 colors or orange colors to the image, right?  5 MS. O'DELL: Object to form.  6 MR. LUDWIG: Objection. This  7 calls for an expert opinion.  8 I will instruct you not to  9 answer that one.  10 MR. DUBIN: You're instructing  11 him not to answer that question about the  12 comparison between these two images?  13 MR. LUDWIG: Correct. You're  14 testifying and I am going to object to that  15 one.  16 MR. DUBIN: You're objecting  17 and you're instructing your witness not to  18 answer a question about the impact of lighting  19 on his images in the reports at issue in this  20 deposition and you're instructing him not to  21 answer.  22 Is that my understanding?  23 MR. LUDWIG: Could you -- let  24 me hear the question again because I think  25 you -- what you said was different than what</p>	<p style="text-align: right;">Page 97</p> <p>1 to -- to respond to that. I mean --  2 MR. DUBIN: Okay. I just --  3 we're obviously going to have to deal with  4 this after the end of the questioning today,  5 but we'll proceed.  6 MS. O'DELL: I am not finished.  7 MR. DUBIN: Okay.  8 MS. O'DELL: Stop interrupting,  9 please. If you ask him questions about the  10 image and the work that he did, he is  11 available to answer your question. He is not  12 here to offer expert opinion. It has been  13 stated numerous times.  14 MR. DUBIN: I am asking him  15 directly about his images right now. So --  16 and he is still being instructed not to  17 answer.  18 BY MR. DUBIN:  19 Q. So, again, I am asking you a  20 question about this image.  21 The tungsten lighting is not  22 just adding more yellow; it's adding golden  23 colors and more orange color to the images,  24 right? Is that correct?  25 MR. LUDWIG: Object.</p>

25 (Pages 94 - 97)



<p style="text-align: right;">Page 110</p> <p>1 opinion and so --</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 him not to answer?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer for the reasons stated</p> <p>6 before.</p> <p>7 MR. DUBIN: Okay. Let's go</p> <p>8 to -- make the next exhibit slide 43.</p> <p>9 MR. KEESTER: I'm sorry, Morty.</p> <p>10 That was 43?</p> <p>11 MR. DUBIN: Yeah, and that will</p> <p>12 be exhibit 17.</p> <p>13 (Exhibit 17 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. The number -- the wavelength of</p> <p>17 light that you assigned to this particle on</p> <p>18 the left that you're calling chrysotile in</p> <p>19 Johnson &amp; Johnson, you are saying that it is</p> <p>20 even more purple than standard reference</p> <p>21 chrysotile depicted on the right, correct?</p> <p>22 MS. O'DELL: Objection.</p> <p>23 This is an incomplete depiction</p> <p>24 of what's being examined. It is including</p> <p>25 images that are not Dr. -- Mr. Hess', excuse</p>	<p style="text-align: right;">Page 112</p> <p>1 to an ISO record for chrysotile and that is</p> <p>2 beyond the scope of this deposition.</p> <p>3 That's -- that is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Let me finish.</p> <p>7 I'm sorry. Let me finish. I stuttered there.</p> <p>8 Judge Schneider was very clear</p> <p>9 that he is going to be asked about his work</p> <p>10 and not a comparison of his work to others and</p> <p>11 that is expert opinion and that's why we're</p> <p>12 instructing him not to answer.</p> <p>13 MR. DUBIN: Okay. So you're</p> <p>14 instructing him not to answer?</p> <p>15 MR. LUDWIG: Correct.</p> <p>16 MR. DUBIN: Okay.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. I want to make sure and let me raise</p> <p>19 the question.</p> <p>20 As a fact, factually, you</p> <p>21 assigned a darker purple color to that</p> <p>22 particle on the left than standard reference</p> <p>23 chrysotile, correct?</p> <p>24 MS. O'DELL: Objection; that is</p> <p>25 the same objection, and I just also object to</p>
<p style="text-align: right;">Page 111</p> <p>1 me, and it is an inappropriate examination of</p> <p>2 this witness, who is a fact witness, and seeks</p> <p>3 expert opinion, and we to object to it.</p> <p>4 MR. DUBIN: First off, I don't</p> <p>5 understand how you can say every time that he</p> <p>6 is a fact witness and not an expert. He is</p> <p>7 here to be deposed about his polarized light</p> <p>8 microscopy work. There is no way to depose</p> <p>9 someone about their polarized light microscopy</p> <p>10 work without asking them questions that are</p> <p>11 technical in nature.</p> <p>12 And so if your objection is</p> <p>13 that every time I ask him for something about</p> <p>14 his conclusions, it's an expert opinion, then</p> <p>15 you are essentially shutting down this</p> <p>16 deposition. It's --</p> <p>17 MS. O'DELL: That's not</p> <p>18 correct. We're asking -- we have not</p> <p>19 instructed Mr. Hess to not respond to</p> <p>20 questions that are technical. We have</p> <p>21 instructed him not to give expert opinion</p> <p>22 because he is here as a fact witness as you</p> <p>23 know and as the Special Master has ruled.</p> <p>24 And this seeks a comparison</p> <p>25 between the photomicrograph that Mr. Hess took</p>	<p style="text-align: right;">Page 113</p> <p>1 use of this color chart without reference to</p> <p>2 the other charts from Dr. Su's tables that</p> <p>3 take into consideration the temperature and</p> <p>4 other aspects of the table. It's an</p> <p>5 incomplete hypothetical. He --</p> <p>6 MR. DUBIN: I am sorry. I</p> <p>7 don't think you understand the -- I don't</p> <p>8 think you understand how the analysis works.</p> <p>9 Because we already did the temperature of the</p> <p>10 lab when we figured out what nanometer of</p> <p>11 light he was calling the particle. So that is</p> <p>12 not a valid objection scientifically. Are you</p> <p>13 instructing him not to answer?</p> <p>14 MS. O'DELL: I am going to let</p> <p>15 Mr. Hess' counsel instruct him, but I have</p> <p>16 made my objection.</p> <p>17 MR. LUDWIG: I am instructing</p> <p>18 him not to answer.</p> <p>19 MR. PLACITELLA: I would just</p> <p>20 like to -- can you hear me? I would just like</p> <p>21 to add the following objection and I am trying</p> <p>22 to stay out of this.</p> <p>23 If you're taking a tiny, little</p> <p>24 piece of a big slide and then blowing -- and</p> <p>25 then sticking it next to a different slide,</p>



<p style="text-align: right;">Page 114</p> <p>1 there is no guarantee that this accurately  2 depicts what the actual slide looks like,  3 especially on a Zoom presentation. So that's  4 my concern to put on the record.  5 MR. DUBIN: Okay. And my --  6 MR. PLACITELLA: Now I'll go  7 back to sleep.  8 MR. DUBIN: My response to that  9 is we're comparing the colors associated with  10 two different nanometers of light, which are  11 depicted accurately on the slide, and I  12 understand that you guys are instructing him  13 not to answer and okay. So we'll have to deal  14 with that later.  15 MR. PLACITELLA: No, no, but my  16 objection was beyond that. My objection was  17 how this was put together, who put the colors  18 on what piece of the photograph and, you know,  19 what someone is being asked to interpret over  20 Zoom; that's all. Now I will go back to  21 sleep.  22 MR. DUBIN: Yeah. Okay.  23 BY MR. DUBIN:  24 Q. So let's go back to the Valadez  25 report.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. How can we independently verify with  2 your report that that particle is purple  3 without actually being at your scope?  4 MS. O'DELL: Objection.  5 MR. LUDWIG: Objection; calls  6 for -- objection to form.  7 BY MR. DUBIN:  8 Q. You can respond.  9 A. So I do the documentation on the  10 pictures.  11 Q. But you're telling me that the  12 pictures don't show the purple.  13 So how can we independently --  14 how can we verify that that particle, in fact,  15 has purple?  16 MS. O'DELL: Objection;  17 misstates his testimony.  18 MR. LUDWIG: Join.  19 THE WITNESS: It's documented  20 as part of the report. It's in the picture.  21 BY MR. DUBIN:  22 Q. So you're saying that purple is in  23 the picture.  24 So where is the purple?  25 MS. O'DELL: Objection;</p>
<p style="text-align: right;">Page 115</p> <p>1 Are you -- are you swearing  2 that particle as purple in --  3 MS. O'DELL: Object to --  4 THE COURT REPORTER: Please  5 repeat your question.  6 BY MR. DUBIN:  7 Q. Are you swearing that that particle  8 is purple, the one depicted in 001?  9 MR. LUDWIG: Objection to form.  10 THE WITNESS: No. The particle  11 itself interior-wise has yellow. I utilized  12 what I could find through the scope around the  13 edges or at the edge.  14 BY MR. DUBIN:  15 Q. So are you telling me that that  16 particle we're looking at is somehow entirely  17 surrounded with purple, but we just can't see  18 it?  19 MS. O'DELL: Objection to the  20 form; asked and answered.  21 MR. LUDWIG: Argumentative.  22 BY MR. DUBIN:  23 Q. You can respond.  24 A. Based on what I saw through the  25 microscope.</p>	<p style="text-align: right;">Page 117</p> <p>1 misstates his testimony.  2 BY MR. DUBIN:  3 Q. You can respond.  4 A. I make my determinations on what I  5 can see through the scope and it's represented  6 to the best that I can get it on the screen in  7 the picture.  8 Q. Okay. But can we verify that with  9 the picture? Can we verify that in some way?  10 A. Other than what's on the picture,  11 Counselor, I cannot speculate.  12 MR. LUDWIG: Do you need it  13 blown up?  14 MR. DUBIN: We can blow it up.  15 MR. PLACITELLA: There it is.  16 BY MR. DUBIN:  17 Q. Do you see purple or red on the talc  18 plates in this image? To the extent you're  19 claiming you see it on that particle, do you  20 see it on all the rounded talc plates?  21 A. On this image, I can just barely.  22 Q. On the rounded talc plates, right?  23 MR. LUDWIG: Listen to the  24 question.  25 BY MR. DUBIN:</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. You can see those kind of edge 2 effects on the talc plates as well, right? 3 MS. O'DELL: I am -- the screen 4 is about ten feet away from Mr. Hess. I am 5 handing him the Valadez report on my computer 6 so he can see it more clearly. 7 BY MR. DUBIN: 8 Q. Do you see those same kind of edge 9 effects on all -- on the talc plates? 10 A. I can see parts, yes. 11 Q. But talc plates aren't purple in 12 1.560 oil, right, and they are not red, 13 correct? 14 MS. O'DELL: And if you need to 15 make it bigger or smaller, Mr. Hess, you can 16 just -- you can touch my screen. 17 BY MR. DUBIN: 18 Q. You can focus on any of these 19 rounded talc plates and you'll see the same 20 edge effects, right? 21 MS. O'DELL: Object to the 22 form. 23 THE WITNESS: Similar. 24 BY MR. DUBIN: 25 Q. So what refractive index number</p>	<p style="text-align: right;">Page 120</p> <p>1 A. At least my opinion of what I am 2 seeing not only on the dispersion staining, 3 but also on the appearance of the structure, 4 whether it shows fibrousity. 5 Q. You are basing your refractive 6 index -- 7 MS. O'DELL: Excuse me. Were 8 you finished with your answer? 9 THE WITNESS: It's based on 10 what I see through the scope and my 11 examination of the particle. 12 BY MR. DUBIN: 13 Q. You are basing your assessment of 14 the refractive index of this particle that 15 you're calling chrysotile based on edge 16 effects that are also present on the rounded 17 talc plates, correct? 18 MS. O'DELL: Objection; 19 misstates his testimony. 20 BY MR. DUBIN: 21 Q. You can respond. 22 A. I base it on what I see around the 23 particle itself. 24 Q. And those -- again, my question is, 25 what you're claiming -- the effect that you're</p>
<p style="text-align: right;">Page 119</p> <p>1 would you assign to any of the talc plates 2 that also have that edge effect? What would 3 you -- what is the refractive index of the 4 talc plates? 5 MS. O'DELL: Object to the 6 form; expert opinion. 7 MR. LUDWIG: This is an expert 8 opinion. I am going to instruct him not to 9 answer that one. 10 BY MR. DUBIN: 11 Q. Mr. Hess, you're basing your calling 12 this particle chrysotile on edge effects that 13 are also present on the talc plates 14 themselves; isn't that right? 15 MS. O'DELL: Objection; 16 misstates his testimony. 17 BY MR. DUBIN: 18 Q. You can respond. 19 MS. O'DELL: Objection; 20 misstates his testimony. 21 MR. LUDWIG: Join. 22 MS. O'DELL: Seeks expert 23 opinion. 24 BY MR. DUBIN: 25 Q. You can respond.</p>	<p style="text-align: right;">Page 121</p> <p>1 claiming to see around that particle you're 2 calling chrysotile is also present on the 3 round talc plates, correct? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection, asked 6 and answered. 7 MS. O'DELL: Misstates his 8 testimony. 9 BY MR. DUBIN: 10 Q. You can respond. 11 A. I am basing it on my determination 12 from what's around the particle. I do not 13 take into account what's around the talc. 14 Q. Okay. So you don't consider whether 15 or not, because this effect is also on the 16 talc plates, whether it's an artifact of 17 your -- of your analysis? You don't look at 18 the talc plates to see whether you see the 19 exact same effect on the talc plates? 20 MS. O'DELL: Objection; 21 misstates his testimony. It's not what he 22 testified a moment ago. 23 BY MR. DUBIN: 24 Q. Are these talc plates, are those 25 also purple, according to you, if you're</p>

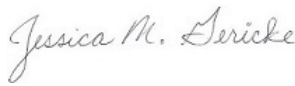
<p style="text-align: right;">Page 122</p> <p>1 looking at the edge effects?</p> <p>2 A. What I am seeing on there is more of</p> <p>3 a red, but it's not in focus to the point that</p> <p>4 I would be able to make a determination.</p> <p>5 Q. So would the refractive -- would the</p> <p>6 refractive index value for those talc plates</p> <p>7 correspond to red?</p> <p>8 MS. O'DELL: Objection.</p> <p>9 He was just saying it wasn't in</p> <p>10 focus and you can't make that determination</p> <p>11 from a photomicrograph on a screen.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. So are those talc plates -- does the</p> <p>14 refractive index that you assigned to them</p> <p>15 based on their edges, does that correspond to</p> <p>16 red?</p> <p>17 MS. O'DELL: Same objection.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You can respond.</p> <p>20 A. I would not give it the same.</p> <p>21 THE COURT REPORTER: Please</p> <p>22 repeat your answer.</p> <p>23 MR. LUDWIG: I think it was: I</p> <p>24 would not give it the same.</p> <p>25 I think you were still talking?</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. PLACITELLA: -- trying to</p> <p>2 keep the record clean.</p> <p>3 MR. DUBIN: Okay.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What CSDS color are you assigning to</p> <p>6 the talc plates that we're looking at?</p> <p>7 MS. O'DELL: Object to the</p> <p>8 form; that seeks expert opinion. He is not</p> <p>9 a -- he did not analyze these particular talc</p> <p>10 particles. He didn't make findings in the</p> <p>11 report.</p> <p>12 To ask him to do it on the fly,</p> <p>13 in a Zoom is an expert opinion and beyond the</p> <p>14 scope of what he did for the report and we</p> <p>15 object on that basis.</p> <p>16 MR. DUBIN: Are you instructing</p> <p>17 him not to answer the question?</p> <p>18 MR. LUDWIG: I was just going</p> <p>19 to say, exactly, and I am instructing him not</p> <p>20 to answer that question because he is not --</p> <p>21 it's not the scope. Him doing an analysis of</p> <p>22 a talc particle on the fly is not what the</p> <p>23 Judge -- is not the purpose of this</p> <p>24 deposition.</p> <p>25 MR. DUBIN: Okay. You have</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: No; that's it. I</p> <p>2 would not give it the same.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. So what is the CSDS color of, let's</p> <p>5 say, this large talc plate towards the bottom</p> <p>6 left? What is the CSDS color that you would</p> <p>7 use to assign a refractive index to that</p> <p>8 particle?</p> <p>9 MS. O'DELL: Which particle?</p> <p>10 MR. PLACITELLA: I will place</p> <p>11 an objection before he answers and I know</p> <p>12 you're doing the best you can, but at this</p> <p>13 point, at least on the screen that I am</p> <p>14 seeing, this image is pretty blurry, you know,</p> <p>15 but you did -- you're doing the best you can.</p> <p>16 MR. DUBIN: This is the image</p> <p>17 that we have from Dr. Longo.</p> <p>18 MR. PLACITELLA: Well, that's</p> <p>19 not necessarily the image. This is a blowup</p> <p>20 on a Zoom, you know.</p> <p>21 MR. DUBIN: He also has the</p> <p>22 actual report in front of him on a computer.</p> <p>23 Now what?</p> <p>24 MR. PLACITELLA: Just --</p> <p>25 MR. DUBIN: Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 instructed him not to answer. We'll just deal</p> <p>2 with it in court later.</p> <p>3 Let's look at the second image,</p> <p>4 002.</p> <p>5 MS. O'DELL: Okay. What image</p> <p>6 are you looking at and what page?</p> <p>7 MR. DUBIN: Okay. So, Jake,</p> <p>8 can you give the page? This is the image of</p> <p>9 CSM 002.</p> <p>10 MR. KEESTER: So my PDF is page</p> <p>11 38, but since your report seems to be one page</p> <p>12 less, it will probably be page 37, but it is</p> <p>13 CSM-002.</p> <p>14 MS. O'DELL: Okay.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. What color is that particle?</p> <p>17 A. Can you zoom in, please?</p> <p>18 Q. Sure.</p> <p>19 A. The particle itself, yellow with</p> <p>20 some pale blue.</p> <p>21 Q. Okay. And do you see that there is</p> <p>22 a rounded talc plate? If you move your eye</p> <p>23 from the top of the two arrows over towards</p> <p>24 the left, there is a rounded talc plate.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. LUDWIG: Objection.</p> <p>2 Once again, you're asking him</p> <p>3 to analyze what you claim to be a talc</p> <p>4 particle on the fly; that calls for expert</p> <p>5 testimony. I am instructing him not to answer</p> <p>6 that question.</p> <p>7 BY MR. DUBIN:</p> <p>8 Q. You said you have done PLM</p> <p>9 dispersion staining analysis for 30 years,</p> <p>10 Mr. Hess?</p> <p>11 A. That is correct.</p> <p>12 Q. Are you not -- are you not able to</p> <p>13 tell me -- to follow over on the image and</p> <p>14 look at this talc plate with me? Is that</p> <p>15 beyond your experience and training?</p> <p>16 MR. LUDWIG: I am going to</p> <p>17 object.</p> <p>18 This is argumentative. His</p> <p>19 experience is under the microscope. So I am</p> <p>20 objecting to the form of the question. It's</p> <p>21 argumentative.</p> <p>22 BY MR. DUBIN:</p> <p>23 Q. Is the particle you're calling</p> <p>24 chrysotile here, is that essentially the same</p> <p>25 color as the talc plates in the image?</p>	<p style="text-align: right;">Page 128</p> <p>1 identification.)</p> <p>2 BY MR. DUBIN:</p> <p>3 Q. You -- for purposes of your</p> <p>4 analysis, you're calling this particle</p> <p>5 somewhere between a magenta and a purple for</p> <p>6 purposes of your analysis, right?</p> <p>7 MS. O'DELL: Just wait a</p> <p>8 minute.</p> <p>9 What particle is this?</p> <p>10 MR. DUBIN: This is the same</p> <p>11 particle, CSM 002.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. You're calling it somewhere between</p> <p>14 a magenta and a purple for purposes of your</p> <p>15 analysis?</p> <p>16 A. I am calling the edge that I saw.</p> <p>17 Q. You're calling the edge that you saw</p> <p>18 purple and magenta? Is that what you're</p> <p>19 saying?</p> <p>20 A. That is correct.</p> <p>21 Q. The same type of purple or red</p> <p>22 colors that are on the talc plates?</p> <p>23 MS. O'DELL: Object to the</p> <p>24 form.</p> <p>25 MR. LUDWIG: Object to the</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. LUDWIG: Objection, same</p> <p>2 objection. I am instructing him not to</p> <p>3 answer.</p> <p>4 MR. DUBIN: Okay. Can't wait</p> <p>5 to be heard on these. All right.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. Do you know what -- if we go down</p> <p>8 and we look at the RI value, RI 1.565, do you</p> <p>9 know what color that -- by reporting that</p> <p>10 refractive index value for this particle, do</p> <p>11 you know what color you were calling it?</p> <p>12 A. I don't recall.</p> <p>13 MR. DUBIN: Let's go to the</p> <p>14 slide, Jake, and we'll make that the next in</p> <p>15 order, the slide for this particle; that will</p> <p>16 be exhibit -- are we on 17 or 18?</p> <p>17 THE COURT REPORTER: One moment</p> <p>18 and I can verify.</p> <p>19 MR. DUBIN: Sure. I think it's</p> <p>20 18.</p> <p>21 THE COURT REPORTER: Yes, this</p> <p>22 is Exhibit 18.</p> <p>23 MR. DUBIN: Why don't we call</p> <p>24 up that slide and we can put it in chat.</p> <p>25 (Exhibit 18 marked for</p>	<p style="text-align: right;">Page 129</p> <p>1 form.</p> <p>2 I instruct you not to answer.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. Do you know -- as you adjust the</p> <p>5 focus on a microscope up and down, do you know</p> <p>6 whether you can -- if things are out of focus,</p> <p>7 you can see a red edge on particles? Are you</p> <p>8 familiar with that?</p> <p>9 A. I have observed that.</p> <p>10 Q. And so one way that you can get</p> <p>11 these types of edges around particles is if</p> <p>12 they are just not -- if they are -- is your</p> <p>13 focus, depending on your focus, right?</p> <p>14 MS. O'DELL: Object to the</p> <p>15 form.</p> <p>16 THE WITNESS: Correct.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. And without these edges, without</p> <p>19 these sort of red colors at the edges, then</p> <p>20 the CSDS color that you would have had to</p> <p>21 assign to the particle would be -- would</p> <p>22 correspond to yellow, right?</p> <p>23 MR. LUDWIG: Objection to form.</p> <p>24 That's calling for an expert</p> <p>25 analysis, which he is not here to present</p>

<p style="text-align: right;">Page 142</p> <p>1 VIDEOGRAPHER: The time is 2 12:38 p.m. We're off the record. 3 (Break held off the record.) 4 VIDEOGRAPHER: The time is 5 1:28 p.m. We are back on the record. 6 BY MR. DUBIN: 7 Q. All right. Well, we'll see. If 8 there is an objection to this as well and this 9 topic, then we'll move on from it, but I need 10 to ask it to make sure. 11 So I put together a slide and I 12 put together some excerpts from the Valadez 13 report just so they are all in one spot for 14 the backup of this slide. 15 We'll mark the backup, which is 16 CX-12, as the next exhibit in order. I guess 17 that's 20? 18 THE COURT REPORTER: If you 19 would like me to check, give me one moment. 20 MR. DUBIN: Sure. Thanks. 21 MR. KEESTER: I believe that's 22 21. 23 MR. DUBIN: Twenty-one. 24 THE COURT REPORTER: I will 25 take counsel's assertion it's 21 without</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. DUBIN: 2 Q. Okay. But it is true, Mr. Hess, 3 that when you're calling particles chrysotile 4 in Johnson &amp; Johnson, you're basing that not 5 on the color of the particle that you're 6 seeing, but on the color of the edge effects 7 that you're seeing, right? 8 A. Focused at the edge, this -- the way 9 everything I do is set up initially with the 10 alignment and centering of all the objectives 11 and lenses with the scope, with the 12 illumination lamp full, field diaphragm open, 13 and I scan for a suspicious object. 14 When I focus in on what appears 15 to be suspicious, I first make sure that I can 16 see signs of fibrousity. Then I go back to 17 dispersion staining and I will utilize what's 18 in Dr. Su's paper, looking at the edge, as 19 stated on page 3 and page 5, utilizing what's 20 on page 5, which specifically shows or 21 indicates to me looking at the edge -- 22 Q. Page 5 of what? 23 A. -- specifically says: At particle 24 edge. 25 Q. Page 3 and page 5 of what?</p>
<p style="text-align: right;">Page 143</p> <p>1 checking. 2 MR. DUBIN: Okay. It's 21 3 then. All right. So we'll make that 21 and 4 can you just put it in chat, Jake? 5 MR. KEESTER: Already done. 6 MR. DUBIN: And then the slide 7 which will be 22 and that's slide 48. 8 (Exhibits 21 and 22 marked for 9 identification.) 10 BY MR. DUBIN: 11 Q. I tried to ask you this already, 12 Mr. Hess, but the same type of edge effects 13 that you're relying on to call particles 14 chrysotile in Johnson &amp; Johnson are also 15 present on talc plates in your analysis; is 16 that true? 17 MS. O'DELL: Objection. This 18 is beyond the scope of the deposition and 19 Mr. Hess' testimony. 20 Further, the way that these 21 particles are depicted from who knows what is 22 misleading and not representative of what was 23 actually in the reports. 24 MR. LUDWIG: I will join and 25 instruct the witness not to answer.</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. O'DELL: He is not 2 finished, Morty. 3 BY MR. DUBIN: 4 Q. Sorry. 5 A. And then I -- best I can or I will 6 do everything I can to make sure that what I 7 am seeing is best represented in the 8 photograph that I take and I am not seeing the 9 things on the screen, I use the scope. 10 Q. So are you telling me that in order 11 to understand your work and the calls that 12 you're making, that I -- someone needs to be 13 actually looking through your microscope? 14 MR. LUDWIG: Objection. 15 MS. O'DELL: Objection. 16 BY MR. DUBIN: 17 Q. You can respond. 18 A. No, sir. I am sure there is plenty 19 of the sample available where someone at your 20 client's place can do the same thing. 21 Q. Well, just to understand what the 22 call is that you're making on a particular 23 particle, do I need to be looking through your 24 scope? 25 A. It's documented in the photographs</p>



<p style="text-align: right;">Page 170</p> <p>1 find it if need be.</p> <p>2 MR. DUBIN: Okay. Well, let's</p> <p>3 make sure that we mark it as an exhibit so</p> <p>4 they have the entire report. The full report</p> <p>5 will be 26.</p> <p>6 MS. O'DELL: I want to make</p> <p>7 sure that this report is at issue in the MDL.</p> <p>8 Can you represent to me which report this</p> <p>9 image came from?</p> <p>10 MR. DUBIN: These are all of</p> <p>11 the reference images that Dr. Longo provides</p> <p>12 along with all of these reports as his</p> <p>13 references for his chrysotile findings. These</p> <p>14 are all part of his analysis in -- it's all</p> <p>15 part of the chrysotile analysis that is being</p> <p>16 discussed in these -- in this deposition.</p> <p>17 MS. O'DELL: With due respect,</p> <p>18 Morty, that doesn't mean anything. I mean,</p> <p>19 the question is, is -- is this --</p> <p>20 MR. DUBIN: Dr. Longo is</p> <p>21 relying on these reference images for his</p> <p>22 identification of chrysotile in the reports</p> <p>23 that we are discussing today.</p> <p>24 MS. O'DELL: And I am asking</p> <p>25 you what report does this image come from?</p>	<p style="text-align: right;">Page 172</p> <p>1 Calidria to say there is chrysotile in Johnson</p> <p>2 &amp; Johnson as part of this analysis are somehow</p> <p>3 off limits, but if you're going to take that</p> <p>4 position, you're going to take that position.</p> <p>5 MS. O'DELL: I'm not --</p> <p>6 MR. DUBIN: We'll take --</p> <p>7 MS. O'DELL: -- the position I</p> <p>8 am taking is that you have an image on the</p> <p>9 screen. We have --</p> <p>10 MR. DUBIN: Okay.</p> <p>11 MS. O'DELL: -- no idea where</p> <p>12 it came from --</p> <p>13 MR. DUBIN: (Inaudible.)</p> <p>14 MS. O'DELL: (Inaudible.)</p> <p>15 THE COURT REPORTER: I'm sorry.</p> <p>16 This is the court reporter. Everyone is</p> <p>17 talking at once and I can't hear anything.</p> <p>18 Apologies.</p> <p>19 MS. O'DELL: Jessica, I'm</p> <p>20 sorry. I mean, I am just trying to finish my</p> <p>21 objection.</p> <p>22 We have no idea where this</p> <p>23 image came from. I am just asking -- you're</p> <p>24 saying it's a reference image from Dr. Longo.</p> <p>25 I have no idea of the context and we --</p>
<p style="text-align: right;">Page 171</p> <p>1 That's what I am asking you.</p> <p>2 MR. DUBIN: I will tell you the</p> <p>3 name of the report, but it will be one of</p> <p>4 Dr. Longo's reference image reports that he</p> <p>5 supplies along with the chrysotile finding --</p> <p>6 alleged chrysotile findings from Johnson &amp;</p> <p>7 Johnson.</p> <p>8 MS. O'DELL: Well --</p> <p>9 MR. DUBIN: (Inaudible.)</p> <p>10 MS. O'DELL: -- comes from</p> <p>11 without knowing if it's at issue in the MDL --</p> <p>12 MR. DUBIN: It is at issue in</p> <p>13 the MDL because they are his reference images</p> <p>14 that he is using to compare reference</p> <p>15 chrysotile to the reports that he has produced</p> <p>16 in the MDL. These are his reference images</p> <p>17 that are incorporated in all of his materials.</p> <p>18 MS. O'DELL: I don't --</p> <p>19 MR. DUBIN: Okay. We can take</p> <p>20 a ten-minute break. We'll get the whole</p> <p>21 report and then if you want to still instruct</p> <p>22 him not to answer, then we'll just add it to</p> <p>23 the pile of things, but I really can't see how</p> <p>24 any legitimate argument could be made that the</p> <p>25 reference images that they are relying on for</p>	<p style="text-align: right;">Page 173</p> <p>1 MR. DUBIN: (Inaudible.)</p> <p>2 MS. O'DELL: -- know that</p> <p>3 before the --</p> <p>4 MR. DUBIN: I am telling you</p> <p>5 what the context is now. Because apparently</p> <p>6 he produces them as individual images. He</p> <p>7 doesn't produce them as part of a report, but</p> <p>8 when he is requested to produce the reference</p> <p>9 images that he is relying on to use as a</p> <p>10 reference for chrysotile in 1.560, he just</p> <p>11 produces these images as the standards that he</p> <p>12 is relying on.</p> <p>13 So it's part of the materials</p> <p>14 that he relies on for these reports and his</p> <p>15 conclusions about the chrysotile -- alleged</p> <p>16 chrysotile in Johnson &amp; Johnson.</p> <p>17 MR. PLACITELLA: I hear you --</p> <p>18 I hear you, Morty, but you're not deposing</p> <p>19 Dr. Longo here.</p> <p>20 MR. DUBIN: But these are</p> <p>21 images taken by Mr. Hess.</p> <p>22 MS. O'DELL: Well, and to my</p> <p>23 knowledge -- and I can be corrected on this,</p> <p>24 Morty, but this is not an image that's been</p> <p>25 produced in the MDL in relation to Dr. Longo's</p>

<p style="text-align: right;">Page 178</p> <p>1 MR. LUDWIG: Join.</p> <p>2 MR. DUBIN: All right. Let's</p> <p>3 make the next exhibit in order, which is 27,</p> <p>4 we'll make it slide 61 -- sorry -- actually,</p> <p>5 slide 95.</p> <p>6 (Exhibit 27 marked for</p> <p>7 identification.)</p> <p>8 MS. O'DELL: I'm sorry. Is</p> <p>9 this exhibit 27?</p> <p>10 MR. DUBIN: Twenty-seven.</p> <p>11 MR. LUDWIG: (Inaudible.)</p> <p>12 THE COURT REPORTER: If you</p> <p>13 just said something, Mr. Hess, I couldn't hear</p> <p>14 you.</p> <p>15 MR. LUDWIG: That was me</p> <p>16 talking to myself. I apologize, Jessica. I</p> <p>17 am simply saying that my exhibit list is</p> <p>18 mis-numbered for some reason.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Are you claiming those two -- those</p> <p>21 two images have the same dispersion staining</p> <p>22 colors?</p> <p>23 MR. LUDWIG: I am going to</p> <p>24 object to the form of the question.</p> <p>25 MS. O'DELL: I object to the</p>	<p style="text-align: right;">Page 180</p> <p>1 objections as made have been proper and</p> <p>2 absolutely consistent with Judge Schneider's</p> <p>3 prior ruling and I will object to any further</p> <p>4 deposition of Mr. Hess.</p> <p>5 MR. DUBIN: Okay. We'll have</p> <p>6 to resolve that. All right. Thanks for</p> <p>7 today. Take care.</p> <p>8 VIDEOGRAPHER: The time is</p> <p>9 2:31 p.m. We're off the record.</p> <p>10 (Witness was excused.)</p> <p>11 (Deposition concluded at</p> <p>12 2:31 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 179</p> <p>1 question.</p> <p>2 MR. LUDWIG: Yeah.</p> <p>3 MS. O'DELL: This is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Yes. This is</p> <p>7 beyond the scope.</p> <p>8 BY MR. DUBIN:</p> <p>9 Q. Have you ever received any criticism</p> <p>10 from NVLAP about your PLM work?</p> <p>11 A. None that I am aware of.</p> <p>12 MR. DUBIN: Okay. At this</p> <p>13 point, you know, I think we're going to have</p> <p>14 to go to the Court. I am going to shut the</p> <p>15 deposition down for the day, but I am not</p> <p>16 agreeing to end it. I think that the</p> <p>17 restrictions that have been placed on me by</p> <p>18 counsels' objections and instructions not to</p> <p>19 answer are improper and we're going to seek</p> <p>20 relief with the Court.</p> <p>21 So I am suspending it for the</p> <p>22 day because I think I am handcuffed, but I</p> <p>23 understand you guys have different opinions.</p> <p>24 So we'll just have to deal with it later.</p> <p>25 MS. O'DELL: Our view is the</p>	<p style="text-align: right;">Page 181</p> <p>1 C E R T I F I C A T E</p> <p>2 I HEREBY CERTIFY that prior to the</p> <p>3 commencement of the examination, PAUL HESS,</p> <p>4 was remotely sworn by me to testify to the</p> <p>5 truth and that the proceedings, evidence, and</p> <p>6 objections are contained fully and accurately</p> <p>7 in the stenographic notes taken by me upon the</p> <p>8 deposition taken on July 10, 2024, and this is</p> <p>9 a true and correct transcript of same.</p> <p>10</p> <p>11</p> <p>12 </p> <p>13</p> <p>14 Jessica M. Gericke, RPR, CCR-NJ,</p> <p>and Notary Public</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification of this</p> <p>18 transcript does not apply to any reproduction</p> <p>19 of the same by any means, unless under the</p> <p>20 direct control and/or supervision of the</p> <p>21 certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>